

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: UNIFORM RULES ON AGENCY PROCEDURE	DOCKET NO. RMU-99-2
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ORDER COMMENCING RULE MAKING

(Issued April 23, 1999)

Pursuant to the authority of IOWA CODE §§ 476.1 and 476.2(1) (1999), the Utilities Board proposes to adopt the amendments attached hereto and incorporated by reference. This rule amends IOWA ADMIN. CODE 199-4 (1999). The reasons for proposing this amendment are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding, identified as Docket No. RMU-99-2, is commenced for purposes of receiving comments upon the proposed amendments attached to this order.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Emmit J. George, Jr.

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Paula S. Dierenfeld

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Dated at Des Moines, Iowa, this 23rd day of April, 1999.

UTILITIES DIVISION [199]

NOTICE OF INTENDED ACTION

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, and 476.2 (1999), the Utilities Board (Board) gives notice that on April 23, 1999, the Board issued an order in Docket No. RMU-99-2, In re: Uniform Rules On Agency Procedure, "Order Commencing Rule Making," to receive public comment on the adoption of proposed new uniform rules relating to declaratory orders.

These amendments are the result of an inquiry initiated by the Board on February 4, 1999, through which the Board invited public comment on the possible adoption of new uniform rules for declaratory orders, rule making, and contested cases. Notice of the Board's inquiry was published in the Iowa Administrative Bulletin on February 24, 1999. Comments were received from Alliant Energy, the Consumer Division of the Department of Justice, the Iowa Association of Electric Cooperatives, and MidAmerican Energy Company. In general, the comments supported the Board's tentative proposal to adopt the uniform rules on declaratory orders (with only minor changes) and to modify the Board's existing rules regarding rule making and contested cases without adopting the uniform rules. Accordingly, the Board is initiating this proceeding to consider adoption of the uniform rules regarding declaratory orders. Amendments to the Board's rule making procedures and contested case procedures will be proposed in separate dockets in the future.

The proposed amendments update the Board's rules to implement 1998 Iowa Acts, chapter 1202, relating to revisions to the Iowa Administrative Procedures Act, IOWA CODE chapter 17A, amended in 1998, effective July 1, 1999. The Board's existing rules for declaratory rulings are rescinded and new uniform rules of agency procedure relating to declaratory orders are adopted with a few modifications specific to the Board, such as designating the number of copies required to be filed, identifying the official to be contacted with any inquiries, and establishing time requirements where the statute and the amended uniform rules leave them to agency discretion.

Any interested person may file a written statement of position on the identified issues no later than June 8, 1999, by filing an original and ten copies in a form

substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on June 23, 1999, in the Board's hearing room at the address listed above.

These amendments are intended to implement Iowa Code sections 17A.9 as amended by 1998 Iowa Acts, chapter 1202, and section 476.1.

Item 1. Amend 199 IAC 4 by deleting the existing chapter and replacing it with the following:

CHAPTER 4

DECLARATORY ORDERS

The utilities division hereby adopts the rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to declaratory rulings, which are printed in Volume I of the Iowa Administrative Code.

199-4.1(17A) Petition for declaratory ruling. Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the utilities board, at 350 Maple Street, Des Moines, Iowa 50319-0069. A petition is deemed filed when it is received by that office. The utilities board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency with an

extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

STATE OF IOWA
BEFORE THE IOWA STATE UTILITIES BOARD

IN RE: THE PETITION OF (insert)	DOCKET NO. _____
petitioner's name) FOR A DECLARATORY)	(completed by board)
ORDER ON (insert rule number, statute,)	
etc., for which interpretation is sought))	PETITION FOR
)	DECLARATORY ORDER
)	

COMES NOW (insert name of petitioner) and requests a declaratory order on (state rule number, statute, order, decision, or other written statement of law or policy of which an interpretation is sought), and in support petitioner states:

(The petition shall then set forth in separately numbered statements:)

1. A clear and concise statement of all relevant facts on which the ruling is requested.
2. A citation to and the relevant language of the specific statutes, rules, policies, decisions, or orders, the applicability of which has been questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petition for a meeting as provided for by rule 4.4(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

WHEREFORE, (insert petitioner's name) prays that the board issue a declaratory order on (insert proposed subject of the requested order).

Respectfully submitted,

(Signature of petitioner or representative)
(Typed or printed name of signer)
(Address and telephone number)

199-4.2(17A) Notice of Petition. Within 5 days after receipt of a petition for a declaratory order, the utilities board shall give notice to all persons not served by the petitioner pursuant to rule 4.6 to whom notice is required by any provision of law.

The utilities board may also give notice to any other persons.

199-4.3(17A) Intervention.

4.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 14 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

4.3(2) Any person who filed a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the utilities board.

4.3(3) A petition for intervention shall be filed at 350 Maple Street, Des Moines, Iowa 50319-0069. Such a petition shall be deemed filed when it is received by that office. The utilities board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly hand-written in ink and must substantially conform to the following form:

STATE OF IOWA
BEFORE THE IOWA STATE UTILITIES BOARD

IN RE: THE PETITION OF (insert)	DOCKET NO. _____
petitioner's name) FOR A DECLARATORY)	(insert docket number
ORDER ON (insert rule number, statute,)	
etc., for which interpretation is sought))	PETITION FOR
)	INTERVENTION
)	

COMES NOW (insert name of petitioner) and requests intervention in this matter and in support petitioner states:

(The petition shall then set forth in separately numbered statements:)

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity.
5. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

WHEREFORE, (insert intervenor's name) prays that the board grant it intervention and issue a declaratory order on (insert proposed subject of the requested order).

Respectfully submitted,

(Signature of intervenor or representative)
(Typed or printed name of signer)
(Address and telephone number)

199-4.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The utilities board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

199-4.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

199-4.6(17A) Service and filing of petitions and other papers.

4.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.6(2) *Filing – When required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers filed in a proceeding for a declaratory order shall be filed with the Executive Secretary, 350 Maple Street, Des Moines, Iowa 50319-0069. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the utilities board.

4.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 199 IAC 7.6(1)(476).

199-4.7(17A) Agency consideration. Upon request by petitioner, the utilities board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the utilities board, a member of the utilities board, or a member of the staff of the utilities board to discuss the questions raised. The utilities board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the utilities board by any person.

199-4.8(17A) Action on petition.

4.8(1) Within the time allowed by Iowa Code § 17A.9(5) after receipt of a petition for a declaratory order, the utilities board or designee shall take action on the petition as required by Iowa Code § 17A.9(5).

4.8(2) The date of issuance of an order or of a refusal to issue an order is the date of mailing or date of delivery if service is by other means, unless another date is specified in the order.

199-4.9(17A) Refusal to issue order.

4.9(1) The utilities board shall not issue a declaratory order where prohibited by Iowa Code § 17A.9(1) and may refuse to issue a declaratory order on some or all of the questions raised for the following reasons:

1. The question does not substantially comply with the required form.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the utilities board to issue an order.

3. The utilities board does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

10. The petitioner requests the utilities board to determine whether a statute is unconstitutional on its face.

4.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

4.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

199-4.10(17A) Contents of declaratory order – effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance, the name of the petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusions.

A declaratory order is effective on the date of issuance.

199-4.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

199-4.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the utilities board, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory ruling serves only as precedent and is not binding

on the utilities board. The issuance of a declaratory order constitutes final agency action on the petition.

April 23, 1999

/s/ Allan T. Thoms

Allan T. Thoms

Chairperson